

Notice of Allowability

Application No.

09/539,096

Examiner

JEFFREY G. HOEKSTRA

Applicant(s)

FITZPATRICK ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE filed 09/04/2007.
2. ☒ The allowed claim(s) is/are 1,2,4-6,8,9,11,13,15,29 and 32-34.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/04/2007 has been entered.

Notice of Amendment

2. In response to the amendment filed on 09/04/2007, amended claim(s) 1, 4, 5, 8, 9, 29, 32, and 33, and canceled claim(s) 3, 7, 10, 12, 14, 16-28, 30 and 31 is/are acknowledged. The current rejections of the claim(s) 1-34 is/are *withdrawn*. The following are set forth:

3. The amendments filed on 07/09/2007 and 09/04/2007 incorporate the allowable subject matter of the canceled claims, overcome the anticipatory rejections under 35 USC 102(b) set forth in the Final Office Action mailed 03/07/2007, and place the application in condition for allowance.

4. The affidavit filed 07/09/2007 expressing the written consent of the assignees is effective to overcome the objection under 37 CFR 1.172(a).

5. The supplemental declaration filed 09/04/2007 is effective to overcome the rejection of claims 1-34 under 35 USC 251 as being based upon a defective reissue declaration.

Allowable Subject Matter

6. Claims 1, 2, 4-6, 8, 9, 11, 13, 15, 29, and 32-34 are allowed.

Response to Arguments

7. Applicant's arguments, see page 1, filed 09/04/2007, with respect to the rejections of claims 1-34 under 35 USC 102(b), the rejections of claims 1-34 under 35 USC 251, and the objections to claims 1-34 under 37 CFR 1.172(a) have been fully considered and are persuasive. The rejections of claims 1-34 have been withdrawn.

EXAMINER'S AMENDMENT

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. Claims 1, 8, 32, and 33 are amended to comply with 37 CFR 1.173 (reissue amendment practice).

Authorization for this examiner's amendment was given in a telephone interview with Michael Cornelison on 01/09/2008.

Please amend claims 1, 8, 32 and 33 as follows:

1. Skin temperature measuring apparatus comprising:

a housing;

first and second [identical thermistors] temperature sensors spaced apart in said housing but in proximity to each other and adapted for contact with generally the same area of skin for developing first and second temperature signals, respectively; [and]

means responsive to said first temperature signal and said second temperature signal for:

(a) developing an indication of the temperature at the skin with which said first [thermistor] and said second temperature sensors [thermistor] are in contact[,]; and

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(b) detecting a difference between the rate of change of said first temperature signal and the rate of change of said second temperature signal which exceeds a predetermined threshold representing a difference in the proximity of said first [thermistor] temperature sensor to the skin and the proximity of said second [thermistor] temperature sensor to the skin, and

a flexible substrate on which said first and second temperature sensors are mounted.

8. Body function measuring apparatus according to claim [7] 5 wherein said substrate has:

(a) first and second lands on which said first sensor and said second sensor, respectively, are mounted, and

(b) a neck extending between said first land and said second land and having a width narrower than the width of said first land and said second land.

32. The body function measuring apparatus of claim 29, wherein the housing is flexible.

33. The body function measuring apparatus of claim 29, wherein the housing is formed to include a neck connecting the first land to the second land.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571) 272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.H./

Jeff Hoekstra

Examiner, Art Unit 3736


MAX HINDENBURG
SUPERVISORY PATENT EXAMINER